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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/518,221	03/02/2000	Rick Fletcher	1129-US-DIV	4794

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EXAMINER	
ENGLAND, DAVID E	

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/518,221	FLETCHER ET AL.	
	Examiner	Art Unit	
	David E. England	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *16-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *16-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

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DETAILED ACTION

1. Claims 16 – 20 are presented for examination.

Claim Objections

2. Claim 19 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 19 recites, "dRMON agents perform continual response time monitoring and forward monitoring results to the dRMON Proxy", which is substantially the same as what is stated in the "deploying" and "forwarding" limitations of claim 16.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al. (5781703) (hereinafter Desai) in view of Engel et al. (6115393) (hereinafter Engel).

4. As to claim 16, as closely interpreted by the Examiner, Desai teaches a method for distributed remote network monitoring (dRMON) in a LAN comprising:

5. deploying, within each of a plurality of ESs to be monitored, executable code comprising an dRMON agent associated with the ES configured to communicate with a dRMON proxy connected to the LAN, each dRMON agent implementing RMON functional groups but only capturing and analyzing packets transmitted and/or received by the ES, (e.g., col. 3, lines 39 – 63 & col. 6, lines 10 – 49);

6. forwarding, periodically by the dMON agents, agent data to said dRMON proxy, (e.g., col. 3, lines 39 – 63 & col. 6, lines 10 – 49); and

7. combining the forwarded agent data at the dRMON proxy, (e.g., col. 3, lines 14 – 63 & col. 6, lines 10 – 49).

8. Desai does not specifically teach the agent data being statistical and/or captured packet data.

9. Engel teaches the agent data being statistical data, (e.g., col. 6, lines 52 – 65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Engel with Desai because utilizing statistical data in later analysis against earlier collected statistical data give the system the ability to compare information to see if there is any degradation in network services, trends or faulty nodes so they may be fixed or attended to so the system can operate with out error.

10. Claim 19 is rejected for similar reasons as stated above.

11. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai and Engel as applied to claim 16 above, and in further view of Dobbins et al. (5790546) (hereinafter Dobbins).

12. As per claim 17, as closely interpreted by the Examiner, Desai and Engel teach all that is similar in nature to claim 17 in regards to communication between dRMON agents and a dRMON proxy with in ESs but they do not specifically teach said proxy includes a set of SNMP interfaces so that existing network application management software can interact with said dRMON proxy as though said dRMON proxy were a non-distributed RMON probe.

13. Dobbins teaches said proxy includes a set of SNMP interfaces so that existing network application management software can interact with said dRMON proxy as though said dRMON proxy were a non-distributed RMON probe, (e.g. col. 16, lines 4 – 26). It would have been obvious to one skilled in the art at the time the invention was made to combine Dobbins with the combine system of Desai and Engel because it would be more efficient for a system to utilize the same functions that a probe has and apply them to a proxy so have all functions of both devices in one device that could save time on transmission time and prevent errors in transmissions to and from the proxy and probe. Furthermore, Applicant discloses that this has been used in the prior art as stated in the claim itself.

14. As per claim 18, as closely interpreted by the Examiner, Desai and Engel teach all that is disclosed above with regard to ESs in the same multicast domain are treated by a dRMON proxy

as though they are on one LAN segment to RMON applications that interact with the dRMON proxy though it were a RMON probe but does not specifically teach ports and hosts are combinable to create Virtual LAN (VLAN) definitions to cause the monitoring function to operate as though all selected hosts were on the same LAN segment being served by the same RMON probe with the dRMON proxy creating and maintaining several such views with each appearing as one interface to RMON management applications.

15. Dobbins more specifically teaches ports and hosts are combinable to create Virtual LAN (VLAN) definitions to cause the monitoring function to operate as though all selected hosts were on the same LAN segment being served by the same RMON probe with the dRMON proxy creating and maintaining several such views with each appearing as one interface to RMON management applications, (e.g. col. 9, line 13 – col. 10, line 5 & col. 17, lines 28 – 67). It would have been obvious to one skilled in the art at the time the invention was made to combine Dobbins with the combine system of Desai and Engel because it would be more convenient for a system to utilize the functions of VLAN's so a user in a specific user group does not have to be connected to a same segment as the group to which it belongs to. Therefore allowing a new user and existing users the convenient of being stationed anywhere in the system and allowing the system to perceive as though the user was on the same segment.

16. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Desai and Engel as applied to claim 16 above, and in further view of Nugent (6076131).

17. As per claim 20, as closely interpreted by the Examiner, Desai does not specifically teach said executable code utilizes native OS APIs to gather information about the ES that could not be gathered via packet capture and analysis, said information being selected from the group consisting of:

18. (1) Network protocol stack configurations and NIC configurations including problematic situations;

19. (2) Application information including what protocols an application is bound to, to its manufacturer, version, file date and time, DLLs used and their versions, etc.;

20. (3) System information such as memory, CPU, disk space, current resource utilizations, etc.; and

21. (4) System performance metrics.

22. Nugent teaches said executable code utilizes native OS APIs to gather information about the ES that could not be via packet capture and analysis, such as:

23. (1) Network protocol stack configurations and NIC configurations including problematic situations, (e.g. col. 9, lines 30 – 61). It would have been obvious to one skilled in the art at the time the invention was made to combine Nugent with Desai because it would be more efficient for a system to analyze information that could have errors in the system so to lower the probability of a system crashing or transmitting faulty information across the network. Engel teaches

24. (2) Application information including what protocols an application is bound to, to its manufacturer, version, file date and time, DLLs used and their versions, etc., (e.g. col. 14, lines 26 – 65);

25. (3) System information such as memory, CPU, disk space, current resource utilizations, etc. , (e.g. col. 14, lines 26 – 65); and

26. (4) System performance metrics, (e.g. col. 15, line 41 – col. 16, line 56). It would have been obvious to one skilled in the art at the time the invention was made to combine Engel with the combine system of Desai and Nugent because it would be more efficient for a system to gather as much information about a system and its ES so if an error or an upgrade is needed it would be more convenient to find the system that require these fixes or modifications.

Response to Arguments

27. Applicant's arguments with respect to claims 16 – 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. England whose telephone number is 571-272-3912. The examiner can normally be reached on Mon-Thur, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David E. England
Examiner
Art Unit 2143

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SUPERVISORY PATENT EXAMINER